

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Doc# 1708618094 Fee \$130.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 03/27/2017 02:14 PM PG: 1 OF 47

Report Mortgage Fraud
800-532-8785

Property of Cook County Clerk's Office

The property identified as: PIN: 10-33-101-104-0000

Address:

Street: 5201-5231 W. Touhy Ave.

Street line 2:

City: Skokie

State: IL

ZIP Code: 60077

Lender: Suzzane Rubin, individually and as Trustee of the Suzanne Muriel Rubin Trust dated March 2, 1992

Borrower: SMA LTD and Rubin Skokie LLC

Loan / Mortgage Amount: \$1,196,244.04

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.



Near North National Title
222 N. LaSalle
Chicago, IL 60601

Y
47
SC
INT

Certificate number: 83596BD7-661B-474C-8944-22387BF3CFF9

Execution date: 3/21/2017

47

1 OF 3

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Prepared by:

Funkhouser Vegosen Liebman & Dunn Ltd.
55 W. Monroe Street, Suite 2300
Chicago, Illinois 60603

After recording return to:

Carlsmith Ball LLP
515 S. Flower Street, Suite 2900
Los Angeles, California 90071
Attn: Annie Kan Baker, Esq.

PIN: 10-33-101-104-0000

Commonly known as: 5201-5231 W. Touhy Avenue
Skokie, Illinois 60077

**JUNIOR MORTGAGE, SECURITY AGREEMENT, FIXTURE
FILING AND ASSIGNMENT OF LEASES AND RENTS**

THIS JUNIOR MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS (this "Mortgage") is made as of March 11, 2017 by **SMA LTD.**, a California limited partnership whose address is 729 Montana Avenue, Suite 6, Santa Monica, California 90403, Attention: Samuel L. Rubin ("Maker"), **RUBIN SKOKIE LLC**, an Illinois limited liability company whose address is 729 Montana Avenue, Suite 6, Santa Monica, California 90403, attention: Samuel L. Rubin ("Guarantor"); and together with Maker, the "Borrower", for the benefit of **SUZANNE RUBIN**, individually and as Trustee of the Suzanne Muriel Rubin Trust dated March 2, 1992, as amended, her successors and assigns, whose address is 560 N. Beachwood Drive, Los Angeles, California 90004 (the "Lender").

WITNESSETH:

Lender made a loan to Maker (the "Loan") in the amount of One Million One Hundred Ninety Six Thousand Two Hundred Forty Four and 04/100 Dollars (\$1,196,244.04) pursuant to the terms and conditions of an Agreement Re Redemption of Partnership Interest dated December 4, 2014 by and between Lender and Maker (as it may be amended, supplemented, or modified from time to time, the "Redemption Agreement"). The Loan is evidenced by that certain Promissory Note Secured by Guaranty dated as of January 1, 2015 in the principal amount of the Loan issued by Maker to Lender (the "Note"), and was originally guaranteed by Maker's affiliate SMA Murrysville, LLC, a Pennsylvania limited liability company ("Murrysville"), pursuant to that certain Guaranty dated January 1, 2015 (the "Original Guaranty"), which Original Guaranty was originally secured by that certain Open End Mortgage, Security Agreement, Fixture Filing and Assignment of Leases and Rents dated January 1, 2015 and recorded on March 11, 2015 with the Westmoreland County Recorder as instrument number 201503110007030 on certain real property owned by Murrysville and located at the southwest corner of William Penn Highway and

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School Road, in the City of Murrysville, County of Westmoreland, Commonwealth of Pennsylvania and is currently secured by that certain Irrevocable Standby Letter of Credit dated December 9, 2016 issued by Wheaton Bank & Trust Company in the amount of \$1,196,244.04, with Lender as the named beneficiary (the "Letter of Credit"). Upon the recordation of this Mortgage in the official records of the Cook County, Illinois, Recorder, Lender has agreed to release the Original Guaranty and Letter of Credit and thereafter the Loan shall be guaranteed by Guarantor pursuant to that certain Guaranty dated as of even date herewith (the "Guaranty"), which Guaranty is secured by this Mortgage. The Loan is due and payable in full on the date that is one (1) year following the date of death of the Lender (the "Maturity Date"). This Mortgage encumbers certain real estate located in Cook County, Illinois, legally described on Exhibit A attached hereto, and payment of the Note is secured by this Mortgage, the Guaranty and other security documents (this Mortgage, the Note, the Guaranty and all other documents evidencing or securing the Loan (as amended, modified, replaced, or restated from time to time) are collectively hereinafter referred to as the "Loan Documents"). The Loan bears interest at a rate which shall be the greater of (i) six and one-half percent (6.50%) per annum or (ii) the rate being paid on the first business day of the calendar year for which the determination is being made by Bank of America, N.A. on Certificates of Deposit having a term of one (1) year in an amount comparable to the Loan (the "Interest Rate"). As used herein, the "Default Rate" shall be two percent (2.00%) per annum over the then applicable Interest Rate (but not to exceed the maximum legal rate).

To secure (i) the payment when and as due and payable of the principal of and interest on the Loan, and any and all late charges, and all other indebtedness evidenced by or owing under the Note and any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing, (ii) the payment of all other indebtedness which this Mortgage by its terms secures, and (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Note, the Guaranty and each of the other Loan Documents (all of such indebtedness, obligations and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the "Debt"), the Borrower does hereby GRANT, SELL, CONVEY, MORTGAGE and ASSIGN unto the Lender, its successors and assigns, and does hereby grant to Lender, its successors and assigns a security interest in, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, VIII, and IX below, all of same being collectively referred to herein as the "Mortgaged Property":

GRANTING CLAUSE I:

THE fee simple interest in the land located in Cook County, Illinois which is legally described on Exhibit A attached hereto and made a part hereof (the "Land");

GRANTING CLAUSE II:

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Borrower now or hereafter acquired in and to any of the foregoing, but excluding trade fixtures and other personal property of any of Borrower's tenants occupying the Land under a lease with Borrower (the "Improvements");

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GRANTING CLAUSE III:

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by the Borrower, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future shares of stock respecting water and water rights pertaining to the Land or the Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights");

GRANTING CLAUSE IV:

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Borrower and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware, heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (collectively, the "Fixtures"); it being agreed that all of said property owned by the Borrower and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Mortgage.

GRANTING CLAUSE V:

TOGETHER WITH the following:

All personal property of every nature whatsoever now or hereafter owned by Borrower and used by Borrower in connection with the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Borrower in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Borrower or on its behalf, including without limitation, any and all Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit

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Accounts, Commercial Tort Claims and General Intangibles, each as defined in the Uniform Commercial Code of the State of Illinois;

All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Land or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Land or improvements thereon or proceeds of any sale, option or contract to sell the Land or improvements thereon or any portion thereof;

Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing.

All of Borrower's books and records pertaining to the foregoing (all of the foregoing being referred to as the "Personal Property");

GRANTING CLAUSE VI:

TOGETHER WITH all right, title and interest which the Borrower hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property (herein collectively referred to as the "Premises") or any portion thereof, whether written or oral (herein collectively referred to as the "Leases"); and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), and all right, title and interest which the Borrower now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Borrower any statutory rights;

GRANTING CLAUSE VII:

TOGETHER WITH any and all Awards and Insurance Proceeds, as each are hereinafter respectively defined, or proceeds of any sale, option or contract to sell the Premises or any portion thereof (provided that no right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and the Borrower hereby authorizes, directs and empowers the Lender, at its option, on the Borrower's behalf, or on behalf of the successors or assigns of the Borrower, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable attorneys' fees, costs and disbursements, to apply the Net Proceeds, as hereinafter defined, to the extent not utilized for the Restoration of the Mortgaged Property as provided in Section 7 or 8 hereof, to payment of the Debt, notwithstanding the fact that the same may not then be due and payable or that the Debt is otherwise adequately secured; and the Borrower agrees to execute and deliver from time to time such further instruments as may be requested by the Lender to confirm such assignment to the Lender of any such proceeds;

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GRANTING CLAUSE VIII:

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Borrower now has or hereafter may acquire of, in and to the Premises, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Borrower or by anyone on behalf of the Borrower to the Lender;

TO HAVE AND TO HOLD the Mortgaged Property, unto the Lender, and its successors and assigns IN FEE SIMPLE, forever, for the purposes and upon the uses herein set forth together with all right to possession of the Premises after the occurrence of any Event of Default; Borrower hereby RELEASING AND WAIVING all rights under and by virtue of the homestead exemption laws of the State of Illinois; subject, however, to those encumbrances which the Lender has approved in writing (the "Permitted Encumbrances"), which include that certain first mortgage lien and security interest, assignment of rents and leases, and a UCC financing statement granted to Wheaton Bank & Trust Company ("Wintrust"), pursuant to certain loan documents dated March 14, 2017, as amended from time to time (which loan shall be herein called the "Senior Loan");

UPON CONDITION that, subject to the terms hereof and until the occurrence of an Event of Default (as hereinafter defined) hereunder, the Borrower shall be permitted to possess and use the Mortgaged Property;

SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if (i) the Borrower shall pay and perform in full when due the Debt and shall duly and timely perform and observe all of the covenants and conditions herein and in the other Loan Documents required to be performed and observed by the Borrower, and (ii) the Lender shall have no further obligation to make any further disbursements of the Loan to or for the benefit of Borrower, then the Lender shall execute and deliver to the Borrower such instruments as may be reasonably requested by the Borrower which are sufficient to release this Mortgage.

THE BORROWER FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Representations of Borrower. Borrower (and each of them) hereby represents and warrants to the Lender as follows:

- (a) Maker (i) is a limited partnership duly formed and validly existing under the laws of the State of California and has complied with all conditions prerequisite to its doing business in the State of California; (ii) has the power and authority to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the nature of its business or its property makes such qualification necessary; and (iv) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.
- (b) Guarantor (i) is a limited liability company duly formed and validly existing under the laws of the State of Illinois and has complied with all conditions prerequisite to

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its doing business in the State of Illinois; (ii) has the power and authority to own its property and to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the nature of its business or its property makes such qualification necessary; and (iv) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

- (c) Borrower has good and marketable title to an indefeasible fee simple estate in the Land, subject to no liens, charges or encumbrances, other than the Permitted Encumbrances; Borrower has good, right and lawful authority to mortgage the Mortgaged Property in the manner and form herein provided; that this Mortgage is and shall remain a valid and enforceable lien on the Mortgaged Property subject only to the Permitted Encumbrances; that Borrower and its successors and assigns shall defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the Land.
- (d) As of the date hereof, there has been no material change in the financial condition of Borrower from that set forth in Borrower's most recent financial statements, and, to the best of Borrower's knowledge, the financial statements and the financial information contained therein was true and correct on the date the statements were issued and there has been no material adverse change as of the date hereof.
- (e) There are no suits or proceedings pending, or to the knowledge of Borrower, threatened against or affecting Borrower, which, if adversely determined, would have a material adverse effect on the financial condition or business of Borrower or its ability to perform its obligations under this Mortgage or any of the other Loan Documents executed by it, and there are no proceedings by or before any court, governmental commission, board, bureau, or other administrative agency pending or, to the knowledge of Borrower, threatened against Borrower, which, if adversely determined, would have a material adverse effect on the financial condition or business of Borrower or its ability to perform its obligations under this Mortgage or any of the other Loan Documents executed by it.
- (f) The Mortgaged Property complies with all requirements of law, municipal ordinances and restrictions and covenants of record with respect to the Mortgaged Property and the use thereof.
- (g) The Borrower has and shall maintain title to the collateral for the Loan, including any additions or replacements thereto, free of all security interests, liens and encumbrances, other than the Permitted Encumbrances and the security interest hereunder.
- (h) No person who owns twenty percent (20.00%) or more of the equity interests in the Borrower, or otherwise controls the Borrower or any of its subsidiaries, is listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, and the proceeds of the Loan will

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not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

- (i) The Borrower is able to pay its debts as such debts become due, and has capital sufficient to carry on its present businesses and transactions and all businesses and transactions in which it is about to engage. The Borrower (i) is not bankrupt or insolvent, (ii) has not made an assignment for the benefit of its creditors, (iii) has not had a trustee or receiver appointed, (iv) has not had any bankruptcy, reorganization or insolvency proceedings instituted by or against it, or (v) shall not be rendered insolvent by its execution, delivery or performance of the Loan Documents or by the transactions contemplated thereunder.

2. Borrower's Covenants.

- (a) Payment of Debt. The Borrower shall, prior to the expiration of any grace period: (i) pay the Debt when due, and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Borrower as provided in the Note, this Mortgage and the other Loan Documents.
- (b) Repair/Maintenance. The Borrower shall (i) promptly repair, restore, replace or rebuild or cause the prompt repair, restoration, replacement or rebuilding of any portion of the Premises which may be damaged or destroyed whether or not Insurance Proceeds (as hereinafter defined) are available or sufficient for that purpose; (ii) keep the Premises in reasonably good condition and repair, free from waste; (iii) pay all operating costs and expenses of the Premises when due; (iv) comply with all legal requirements applicable to all or any portion of the Premises, or the use and occupancy, thereof (subject to the right of the Borrower to contest the enforceability or applicability of any such legal requirements in good faith, diligently and at its expense by appropriate proceedings which shall not subject the Borrower or the Lender to any risk of civil or criminal liability and which shall operate during the pendency thereof to prevent the imposition or foreclosure of any lien upon, or any interference with the availability, use or occupancy of, the Mortgaged Property or any part thereof), and observe and comply with any conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including without limitation zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions that are applicable to all or any portion of the Premises or the use and occupancy thereof; (v) refrain from any action, and correct any condition known to the Borrower, which would materially increase the risk of fire or other hazard to the Premises or any portion thereof; and (vi) cause the Premises to be managed in a competent and reasonably professional manner.
- (c) Partnership Agreement of Maker. The Partnership Agreement of Maker shall not, without the prior written consent of the Lender, be amended or modified if such amendment or modification could have a material adverse effect on Maker's ability to perform its obligations under any of the Loan Documents, nor shall any partner of Maker be released or discharged from its obligations under Maker's Partnership

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Agreement, nor shall any partner of Maker transfer, pledge or encumber in any way any partnership interest in Maker or the right to receive income or proceeds from Maker.

- (d) Operating Agreement of Guarantor. The Operating Agreement of Guarantor shall not, without the prior written consent of the Lender, be amended or modified if such amendment or modification could have a material adverse effect on Guarantor's ability to perform its obligations under any of the Loan Documents, nor shall any member or manager of Guarantor be released or discharged from its or his obligations under Guarantor's Operating Agreement, nor shall any member of Guarantor transfer, pledge or encumber in any way any member interest in Guarantor or the right to receive income or proceeds from Guarantor.
- (e) Continuing Existence. The Borrower, without the prior written consent of the Lender, shall not (i) permit itself to be dissolved or its existence terminated, or (ii) amend or modify its organizational documents or trust documents, as the case may be.
- (f) Compliance with Laws. The Borrower shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to the Borrower or to the Premises or any part thereof.
- (g) Intentionally Omitted.
- (h) Distributions. Maker or Guarantor shall be permitted to make distributions to their respective partners or members of any revenue received by or on behalf of the Borrower from the operation or ownership of the Premises provided that no Event of Default, and no default which with the passage of time or giving of notice would constitute an Event of Default, shall have occurred, prior to or immediately following such distribution.
3. Liens, Contest and Defense of Title.
- (a) The Borrower shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder, whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Mortgage, including liens for labor or materials with respect to the Premises ("Mechanic's Liens"), provided, however, that notwithstanding the foregoing the lien and security interest securing the Senior Loan are permitted hereunder.
- (b) Notwithstanding paragraph (a) of this Section, the Borrower may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Mortgage;

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and (ii) within thirty (30) days after the Borrower has been notified of the filing of any such Mechanic's Liens, the Borrower shall have notified the Lender in writing of the Borrower's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens, and shall have obtained a title insurance endorsement over such Mechanic's Liens in form and substance reasonably satisfactory to the Lender, insuring the Lender against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement the Borrower may deposit and keep on deposit with a depository designated by the Lender a sum of money sufficient, in the reasonable judgment of the Lender, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by the Lender in its sole discretion to protect the priority of this Mortgage. In case the Borrower shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest, within the time stated above; then the Lender may, at its option, apply any money and liquidate any securities then on deposit with the depository designated by the Lender in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement, without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall (in Lender's reasonable judgment) be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then the Borrower shall forthwith, upon demand, deposit with the depository designated by the Lender the sum which shall (in Lender's reasonable judgment, when added to the funds then on deposit the depository) be necessary to make such payment in full (or such other security as shall be reasonably satisfactory to Lender). If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided no Event of Default shall then exist) when the Lender has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the depository under this Section 3(b) shall be paid to the Borrower, provided that no Event of Default shall then exist.

- (c) If the lien and security interest of the Lender in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, the Borrower shall immediately notify the Lender and, except as to a foreclosure action by the holder of the Senior Loan, shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all reasonable actions necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property.

4. Payment and Contest of Taxes.

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- (a) The Borrower shall pay or cause to be paid when due, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Mortgaged Property, or any part thereof, or any interest therein, or any income or revenue therefrom, or any obligation or instrument secured hereby, and all installments thereof (collectively, the "Taxes"), on or before the date such Taxes are due; and the Borrower shall discharge any claim or lien relating to Taxes upon the Premises. The Borrower shall provide the Lender with copies of paid receipts for Taxes or other proof of payment of Taxes, if requested by the Lender, within ten (10) business days after being requested to do so by the Lender.
- (b) Notwithstanding paragraph (a) of this Section, the Borrower may, in good faith and with reasonable diligence, upon advance written notice to Lender, contest or cause to be contested the validity or amount of any such Taxes, provided that: (i) no Event of Default has occurred; (ii) such proceeding shall stay the collection of the applicable Taxes from Borrower and from the Premises or Borrower shall have paid all of the applicable Taxes under protest, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (iv) neither the Premises nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost so long as the contest is being pursued, and (v) upon Lender's request, Borrower shall have deposited with a depository selected by Lender adequate reserves for the payment of the applicable Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the applicable Taxes under protest, or Borrower shall have furnished such other security as may be accepted by Lender, in its sole and absolute discretion, to insure the payment of any contested Taxes, together with all interest and penalties thereon. If the Borrower fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds as hereinabove provided, the Lender may, at its option, liquidate any securities and apply the monies then on deposit with the depository, in payment of, or on account of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon according to any written bill, notice or statement, without inquiry as to the amount, validity or enforceability thereof. If the amount of money and any such security so deposited shall (in the Lender's reasonable judgment) at any time be insufficient for the payment in full of such Taxes, together with all penalties and interest which are or might become due thereon, the Borrower shall forthwith, upon demand, either deposit with the depository designated by the Lender a sum (or such other security as shall be reasonably satisfactory to the Lender) which when added to the funds then on deposit, shall (in the Lender's reasonable judgment) be sufficient to make such payment in full, or, if Lender has applied funds so deposited on account of such Taxes, restore such deposit to an amount reasonably satisfactory to the Lender. After final disposition of such contest and upon the Borrower's written request and delivery to the Lender of an official bill for such Taxes, at the direction of Lender the depository shall liquidate any securities and apply the monies, if any, then on deposit under this Section 4 to the payment of such Taxes or that part thereof then

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unpaid and the balance, if any, shall be refunded to the Borrower after such final disposition, provided that no Event of Default shall then exist.

5. Change in Tax Laws.

- (a) If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Lender, the Borrower or the Mortgaged Property, any tax is imposed or becomes due in respect of the Note or this Mortgage (excluding income, excise or franchise taxes imposed upon the Lender, except as provided in Section 5(c) below), or any liens on the Mortgaged Property created thereby, then the Borrower shall pay such tax in the manner required by such law.
- (b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Mortgaged Property for the purpose of taxation by creating any lien thereon, or imposing upon the Lender any liability for the payment of all or any part of the Taxes required to be paid by the Borrower, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of the Lender in the Mortgaged Property, or the manner of collection of Taxes so as to adversely affect this Mortgage, the Debt, or the Lender, then, and in any such event, the Borrower, upon demand by the Lender, shall pay such Taxes, or reimburse the Lender therefor on demand, unless the Lender determines, in the Lender's sole judgment, that such payment or reimbursement by the Borrower is unlawful or that the payment might, in the Lender's judgment, constitute usury or render the Debt wholly or partially usurious; in which event the Lender may elect to declare the Debt to be due and payable within the lesser of (i) thirty (30) days after written notice, or (ii) such shorter period as may be required to ensure compliance by Lender with applicable law.
- (c) Nothing contained herein shall require the Borrower to pay any income, franchise or excise tax imposed upon the Lender, excepting only such income, franchise or excise tax which may be levied against the income of the Lender as a complete or partial substitute for Taxes required to be paid by the Borrower hereunder and then only to the extent that such tax substitutes for the Taxes required to be paid by Borrower hereunder.

6. Insurance Coverage. For so long as this Mortgage is in effect, Borrower shall continuously maintain insurance in accordance with the following provisions:

- (a) Borrower shall obtain and maintain, or cause the tenant occupying the Land to obtain and maintain, at all times during the term of the Loan the insurance required by Lender pursuant to Exhibit B attached hereto. In addition, if and at such time as the Senior Loan has been paid in full, Borrower shall cause Lender to be named as a named insured under the insurance policies required by Lender and Lender shall be identified in each policy as follows: Suzanne Rubin, individually and as Trustee of The Suzanne Muriel Rubin Trust, dated March 2, 1992, as amended, her successors and/or assigns as their respective interests may appear. Borrower shall provide Lender with evidence of all such insurance required hereunder.

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- (b) The policies of insurance to be obtained and maintained by Borrower under the provisions of this Mortgage shall be issued by responsible insurance carriers with a Best's rating of no less than A/VII, licensed to do business in the State of Illinois, who are reasonably acceptable to Lender, provided, however, that any policy acceptable to the holder of the Senior Loan shall be acceptable to Lender, and shall be in such form and with such endorsements (including a mortgagee clause in favor of Lender), waivers and deductibles (in no event to exceed \$10,000) as Lender shall designate or approve. Without limitation on the foregoing:
- (i) All policies shall name Borrower as the insured, and (with the exception of policies for worker's compensation insurance) shall name Lender as mortgagee and as an additional insured (under a standard non-contributing mortgagee protection clause, in form reasonably satisfactory to Lender, attached to such policy or policies whenever applicable, and providing, among other matters, that all insurance proceeds not payable to the holder of the Senior Loan shall be paid to Lender).
 - (ii) All policies shall contain: (1) the agreement of the insurer to give Lender at least thirty (30) days' written notice prior to cancellation or expiration of or change in such policies, or any of them; (2) a waiver of subrogation rights against Lender and, if available Borrower; (3) an agreement that such policies are primary and non-contributing with any insurance that may be carried by Lender; (4) a statement that the insurance shall not be invalidated should any insured waive in writing prior to a loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy; and (5) if obtainable, a provision that no act or omission of Borrower shall affect or limit the obligation of the insurance carrier to pay the amount of any loss sustained. As of the date hereof, and subject to any changes in such requirements which Lender may, in its discretion, make from time to time pursuant to its rights under this Section 6, each policy of property insurance hereunder shall contain a lender's loss payable endorsement, lender clause, or other non-contributory mortgagee clause of similar form and substance reasonably acceptable to Lender in favor of Lender as a second mortgagee.
- (c) Concurrently herewith, Borrower shall deliver to Lender original policies or certificates with premiums prepaid evidencing the insurance required hereunder. Borrower shall procure and pay for renewals of such insurance (or shall cause the procurement and payment) from time to time before the expiration thereof, and Borrower shall deliver to Lender such original renewal policies or certificates with premiums prepaid at least thirty (30) days before the expiration of any existing policy.
- (d) Borrower, for itself, and on behalf of its insurers, hereby releases and waives any right to recover against Lender on any liability for: damages for injury to or death of persons; any loss or damage to property, including the property of any occupant of the Premises; any loss or damage to buildings or other improvements comprising

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the Premises; any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is or would be covered by the insurance required to be carried hereunder by Borrower, or is otherwise insured; or claims arising by reason of any of the foregoing, except to the extent caused solely by the gross negligence or willful misconduct of Lender.

- (e) Lender shall not, by reason of accepting, rejecting, obtaining or failing to obtain insurance, incur any liability for (i) the existence, non-existence, form, amount or legal sufficiency thereof, (ii) the solvency or insolvency of any insurer, or (iii) the payment of losses. All insurance required hereunder or carried by Borrower shall be procured at Borrower's sole cost and expense. Borrower shall deliver to Lender receipts reasonably satisfactory to Lender evidencing full prepayment of the premiums therefor. In the event of foreclosure on, or other transfer of title in lieu of foreclosure of, the Premises, all of Borrower's interest in and to any and all insurance policies in force shall pass to Lender, or the transferee or purchaser as the case may be, and Lender is hereby irrevocably authorized to assign in Borrower's name to such purchaser or transferee all such policies, which may be amended or rewritten to show the interest of such purchaser or transferee.
- (f) **BORROWER IS HEREBY NOTIFIED PURSUANT TO THE ILLINOIS COLLATERAL PROTECTION ACT (815 ILCS 180/1 ET. SEQ.) THAT UNLESS BORROWER PROVIDES LENDER WITH EVIDENCE OF THE INSURANCE COVERAGE REQUIRED BY THIS AGREEMENT, LENDER MAY PURCHASE THE REQUIRED INSURANCE AT BORROWER'S EXPENSE TO PROTECT LENDER'S INTEREST IN THE PREMISES. THIS INSURANCE MAY, BUT NEED NOT, PROTECT BORROWER'S INTERESTS. THE COVERAGE THAT LENDER PURCHASES MAY NOT PAY ANY CLAIM THAT BORROWER MAKES OR ANY CLAIM THAT IS MADE AGAINST BORROWER IN CONNECTION WITH THE PREMISES. BORROWER MAY LATER CANCEL ANY INSURANCE PURCHASED BY LENDER, BUT ONLY AFTER PROVIDING LENDER WITH EVIDENCE THAT BORROWER HAS OBTAINED INSURANCE AS REQUIRED BY THIS MORTGAGE. IF LENDER PURCHASES INSURANCE FOR THE PREMISES, BORROWER WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AT THE DEFAULT RATE AND ANY OTHER CHARGES LENDER MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR THE EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE SHALL BE ADDED TO BORROWER'S TOTAL OUTSTANDING BALANCE OR OBLIGATION AND SHALL CONSTITUTE ADDITIONAL DEBT. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE BORROWER MAY BE ABLE TO OBTAIN ON ITS OWN.**

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- (g) Approval by the Lender of any policies of insurance (“Policies”) shall not be deemed a representation by the Lender as to the adequacy of coverage of such Policies or the solvency of the insurer.
7. Casualty Loss; Proceeds of Insurance.
- (a) The Borrower will give the Lender prompt written notice of any loss or damage to the Premises, or any part thereof, by fire or other casualty.
- (b) In case of loss or damage covered by any one of the Policies in excess of \$200,000.00, and provided that Wintrust does not exercise such right under the terms of the Senior Loan, the Lender is hereby authorized to settle and adjust any claim under such Policies (and after the entry of a decree of foreclosure, or a sale or transfer pursuant thereto or in lieu thereof, the decree creditor or such purchaser or transferee, as the case may be, provided that Wintrust does not exercise such right under the terms of the Senior Loan, is hereby authorized to settle and adjust any claim under such Policies) upon consultation with, but without requiring the consent of, the Borrower; and the Lender shall, and is hereby authorized to, collect and receipt for any and all proceeds payable under such Policies in connection with any such loss (collectively, the “Insurance Proceeds”). Borrower hereby irrevocably appoints Lender as its attorney-in-fact for the purposes set forth in the preceding sentence, subject to the rights of the holder of the Senior Loan. Each insurance company is hereby authorized and directed to make payment (i) of one hundred percent (100%) of all such losses (if such loss exceeds said amount) directly to Lender alone, and (ii) of one hundred percent (100%) of all such losses (if such loss is less than or equal to said amount) directly to Borrower alone, and in no case to Borrower and Lender jointly. All reasonable costs and expenses incurred by the Lender in the adjustment and collection of any such Insurance Proceeds (including without limitation reasonable attorneys’ fees and expenses) shall be so much additional Debt, and shall be reimbursed to the Lender upon demand or may be paid and deducted by the Lender from such Insurance Proceeds prior to any other application thereof. Lender shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure, other than the gross negligence or willful misconduct of Lender.
- (c) Net Insurance Proceeds received by the Lender under the provisions of this Mortgage or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the Mortgaged Property or any part thereof shall be applied by the Lender at its option as and for a prepayment on the Note, without a prepayment fee (whether or not the same is then due or otherwise adequately secured), or shall be disbursed for restoration of such improvements (“Restoration”), in which event the Lender shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Note. If Lender elects to permit the use of Insurance Proceeds to restore such improvements it may do all necessary acts to accomplish that purpose, including advancing additional funds and all such additional funds shall constitute part of the Debt. If Lender elects to make the

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Insurance Proceeds available to Borrower for the purpose of effecting the Restoration, or, following an Event of Default, elects to restore such improvements, any excess of Insurance Proceeds above the amount necessary to complete the Restoration shall be applied as and for a prepayment on the Note, without a prepayment fee or premium. No interest shall be payable to Borrower upon Insurance Proceeds held by Lender; provided, however that in the event that the Insurance Proceeds are permitted to be used for Restoration, then such Insurance Proceeds shall be maintained by a depository selected by Lender in a separate account.

- (d) Notwithstanding the provisions of Section 7(c) above, Lender agrees to allow the Insurance Proceeds to be disbursed for Restoration provided: (i) no Event of Default, and no default which with the passage of time or giving of notice would constitute an Event of Default, shall have occurred; (ii) Lender shall be satisfied in its sole and absolute discretion, that by expenditure of the Insurance Proceeds hereunder the Premises damaged or destroyed shall be fully restored within a reasonable period of time to the condition and value contemplated by this Mortgage and the Restoration Plans (as hereinafter defined), and all payments required under the Loan will continue to be paid as and when the same become due and payable; (iii) in Lender's good faith judgment, such work of repair and restoration can be completed in the ordinary course of business not later than the earlier of (A) two (2) years from Lender's approval of the Restoration Plans; (B) the outside date, if any, under any Lease; (iv) Lender shall have reviewed and approved Borrower's plans and specifications for the repair and restoration of the Mortgaged Property involving costs in excess of \$200,000.00 (the "Restoration Plans"), including approval of Borrower's architect and any general contractors, subcontractors and material suppliers employed to perform such work; (v) if so required by Lender in its sole and absolute discretion, all general contractors, all major subcontractors and material suppliers shall have supplied one hundred percent (100%) performance and completion bonds; (vi) if the net Insurance Proceeds available are insufficient for payment of the full cost of restoration or repair and the payments under the Loan during the completion period, as estimated by Lender, then Borrower shall have deposited with a depository selected by Lender sufficient additional funds to insure payment of all such costs, or made arrangements reasonably acceptable to Lender for such sufficient additional funds; (vii) rent loss or business interruption insurance is available to cover the full amount of any loss of income from the Premises during its repair and restoration; (viii) Borrower shall provide evidence of the implementation of builder's risk coverage for the Premises with coverage and in such amounts as Lender shall reasonably request and which otherwise complies with the insurance requirements set forth in Section 6 hereof; and (x) Borrower shall have satisfied such other conditions as Lender may in good faith determine to be appropriate.
- (e) So long as any Debt shall be outstanding and unpaid, and whether or not Insurance Proceeds are available or sufficient therefor, the Borrower shall promptly commence and complete, or cause to be commenced and completed, with all reasonable diligence, the Restoration of the Premises as nearly as possible to the

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same value, condition and character which existed immediately prior to such loss or damage in accordance with the Restoration Plans and in compliance with all legal requirements. Any Restoration shall be effected in accordance with procedures to be first submitted to and approved by the Lender in accordance with Section 9 hereof. The Borrower shall pay all costs of such Restoration to the extent Insurance Proceeds are not made available or are insufficient.

8. Condemnation and Eminent Domain.

- (a) Any and all awards (the "Awards") in excess of \$200,000.00 heretofore or hereafter made or to be made to the Borrower (or any subsequent owner of the Premises, or any part thereof) by any governmental or other lawful authority for the taking, by condemnation or eminent domain, of all or any part of the Premises (including any award from the United States government at any time after the allowance of a claim therefor, the ascertainment of the amount thereto, and the issuance of a warrant for payment thereof), and not otherwise required to be assigned and paid to the holder of the Senior Loan under the terms thereof, are hereby assigned by the Borrower to the Lender, which Awards the Lender is hereby authorized to collect and receive from the condemnation authorities, and the Lender is hereby authorized to appear in and prosecute, in the name of and on behalf of the Borrower, any action or proceeding to enforce any such cause of action in which an award in excess of \$200,000.00 is sought and to make any compromise or settlement in connection therewith and to give appropriate receipts and acquittance therefor in the name and in behalf of the Borrower. The Borrower shall give the Lender prompt notice of the actual or threatened commencement of any condemnation or eminent domain proceedings affecting all or any part of the Premises and shall deliver to the Lender copies of any and all papers served in connection with any such proceedings. All reasonable costs and expenses incurred by the Lender in the adjustment and collection of any such Awards (including without limitation reasonable attorneys' fees and expenses) shall be so much additional Debt, and shall be reimbursed to the Lender from any Award prior to any other application thereof. The Borrower further agrees to make, execute and deliver to the Lender, at any time upon request, free, clear, and discharged of any encumbrance of any kind whatsoever (other than Permitted Encumbrances), any and all further assignments and other instruments deemed necessary by the Lender for the purpose of validly and sufficiently assigning all Awards in excess of \$200,000.00 and other compensation heretofore and hereafter made to the Borrower for any permanent taking, under any such proceeding (other than such Awards or other compensation required to be assigned and paid to holder of the Senior Loan under the terms thereof).
- (b) The proceeds of any Award received by the Lender under the provisions of this Mortgage or any instrument supplemental hereto shall be applied by the Lender at its option as and for a prepayment of the Debt, without a prepayment fee (whether or not the same is then due or otherwise adequately secured), or shall be disbursed for Restoration of the Premises, in which event the Lender shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the Debt. If Lender elects to permit the use of the proceeds of an Award

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to restore such improvements it may do all necessary acts to accomplish that purpose, including advancing additional funds, all such additional funds to constitute part of the Debt. If Lender elects to make the proceeds of an Award available to Borrower for the purpose of effecting the Restoration, or, following an Event of Default, elects to restore such improvements, any excess of such proceeds above the amount necessary to complete the Restoration shall be applied as and for a prepayment of the Debt, without a prepayment fee or premium. No interest shall be payable to Borrower upon such proceeds held by Lender; provided, however that in the event that the proceeds of any Award are permitted to be used for restoring the improvements, then such proceeds shall be maintained by a depository selected by Lender in a separate account.

- (c) Notwithstanding the provisions of Section 8(b) above, Lender agrees to allow the Award to be disbursed for Restoration provided: (i) all conditions to the use of casualty proceeds under Section 7(d) have been satisfied, and (ii) the condemnation, in the reasonable judgment of Lender, shall have no material adverse effect on the operation or value of the Premises remaining after the condemnation is completed, and (k) Borrower shall have satisfied such other conditions as Lender may in good faith determine to be appropriate.
- (d) So long as any Debt shall be outstanding and unpaid, and whether or not Awards are available or sufficient therefor, the Borrower shall promptly commence and complete, or cause to be commenced and completed, with all reasonable diligence the Restoration of the portion of the Premises not so taken as nearly as possible to the same value, condition and character which existed immediately prior to such taking in compliance with all legal requirements. Any Restoration of the Premises involving costs in excess of \$200,000.00 (and not otherwise required to be assigned and assigned to the holder of the Senior Loan under the terms thereof) shall be effected in accordance with Restoration Plans to be first submitted to and approved by the Lender as provided in Section 9 hereof. The Borrower shall pay all costs of such Restoration to the extent the Award is not made available or is insufficient.

9. Disbursement of Insurance Proceeds and Awards.

- (a) All Insurance Proceeds and/or Awards received by the Lender as provided in Section 7 or Section 8 hereof shall, after payment or reimbursement therefrom of all reasonable costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by the Lender in the adjustment and collection thereof (collectively, the "Net Proceeds"), shall be deposited with a depository designated by the Lender, and applied as provided in this Section.
- (b) The Lender may elect to apply the Net Proceeds to prepayment of the Debt, whether then due or not. If the Debt is not prepaid in full, then the Net Proceeds shall be applied to the installments of principal and interest in the inverse order of maturity.
- (c) All Net Proceeds which are not applied to the payment of the Debt shall be applied to fund the payment of the costs, fees and expenses incurred for the Restoration of

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the Premises as required under Section 7 or Section 8 hereof and such Net Proceeds shall be disbursed through the title company which has insured the lien of the Mortgage to complete the Restoration; provided that the Lender shall receive the following:

- (i) Restoration Plans (unless the costs involved in such Restoration shall not exceed \$200,000.00), which shall be subject to the reasonable approval of the Lender prior to the commencement of the Restoration.
 - (ii) Such architect's and engineer's certificates, waivers of lien, contractor's sworn statements, payment and performance bonds (if applicable), title insurance endorsements, plats of survey, opinions of counsel and such other evidences of cost, payment and performance as the Lender may reasonably require and approve.
- (d) If the Borrower shall fail to commence Restoration within forty five (45) days after the settlement of the claim involving loss or damage to the Premises, and diligently proceed to complete Restoration in accordance with the Restoration Plans and Applicable Laws, or if any other Event of Default shall occur hereunder at any time (whether before or after the commencement of such Restoration), all or any portion of the Debt may be declared to be immediately due and payable and such Net Proceeds, or any portion thereof, then held, or subsequently received, by the depository selected by Lender hereunder may be applied, at the option and in the sole discretion of the Lender, to the payment or prepayment of the Debt in whole or in part, or to the payment and performance of such obligations of the Borrower as may then be in default hereunder. For the purposes of this Section 9(d), to commence Restoration shall mean to make efforts to obtain plans, permits and contractors to complete the Restoration.
- (e) Any surplus which may remain out of such Net Proceeds after payment of all costs, fees and expenses of such Restoration shall be applied to prepayment of the Debt, without the payment of a prepayment fee or prepayment premium.
10. The Lender's Performance of the Borrower's Obligations.
- (a) Upon the occurrence of an Event of Default hereunder, the Lender may, but without any obligation to do so, upon simultaneous notice to the Borrower, make any payment or perform any act which the Borrower is required to make or perform hereunder or under any other Loan Document (whether or not the Borrower is personally liable therefor) in any form and lawful manner deemed expedient to the Lender, including without limitation, the right to enter into possession of the Premises, or any portion thereof, and to take any action (including without limitation the release of any information regarding the Premises, the Borrower and the obligations secured hereby) which the Lender deems reasonably necessary or desirable in connection therewith, all at the sole cost and expense of the Borrower. The Lender, in addition to any rights or powers granted or conferred hereunder but without any obligation to do so, may complete construction of, rent, operate, and

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manage the Premises, or any part thereof, including payment of management fees and other operating costs and expenses, of every kind and nature in connection therewith, so that the Premises shall be operational and usable for their intended purposes. All monies paid, and all reasonable expenses paid or incurred in connection therewith, including but not limited to reasonable costs of surveys, evidence of title, court costs and attorneys' fees and expenses and other monies advanced by the Lender to protect the Premises and the lien hereof, to complete construction of, rent, operate and manage the Premises or to pay any such operating costs and expenses thereof or to keep the Premises operational and usable for their intended purposes shall be so much additional Debt, and shall become immediately due and payable on demand, and with interest thereon at the Default Rate.

- (b) The Lender, in making any payment, may do so according to any written bill, notice, statement or estimate, without inquiry into the amount, validity or enforceability thereof.
- (c) Nothing contained herein shall be construed to require the Lender to advance or expend monies for any purpose mentioned herein, or for any other purposes.

11. Security Agreement.

- (a) Grant of Security Interest. Borrower hereby grants to Lender a security interest in the Personal Property to secure the Debt. This Mortgage constitutes a security agreement with respect to all Personal Property in which Lender is granted a security interest hereunder, and Lender shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of Illinois, as the same may be amended from time to time (the "Code") as well as all other rights and remedies available at law or in equity.
- (b) Perfection. Borrower hereby consents to any instrument that may be reasonably requested by Lender to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Mortgage or the interest of Lender in the Mortgaged Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Borrower shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all expenses, including without limitation, reasonable attorneys' fees and costs (of both in house and outside counsel), incurred by Lender in connection with the preparation and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Borrower hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Borrower hereby irrevocably constitutes and appoints Lender as the attorney-in-fact of Borrower, to file with the appropriate filing office any such instruments. In addition, Borrower hereby authorizes Lender to cause any financing statement or

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fixture filing to be filed or recorded without the necessity of obtaining the consent of Borrower.

- (c) Place of Business. Borrower maintains its administrative office by its property manager as set forth as the address of Borrower in Section 31 below, and Borrower will notify Lender in writing of any change in its place of business within five (5) business days of such change.
- (d) Fixture Filing. This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code and will be recorded as a "fixture filing" in accordance with the Code.
- (e) Representations and Warranties. The Borrower represents and warrants that: (i) the Guarantor is the record owner of the Mortgaged Property; (ii) Maker's administration is conducted through its principal office located in the State of California; (iii) Maker's state of formation is the State of California; (iv) Maker's organizational identification number is 198615000030; (v) Guarantor's administration is conducted through the executive office of its property manager located in the State of California; (vi) Guarantor's state of formation is the State of Delaware; (vii) Guarantor's exact legal name is as set forth on Page 1 of this Mortgage; (viii) Guarantor's organizational identification number is 06128831; (ix) Guarantor is the owner of the Personal Property subject to no liens, charges or encumbrances other than the lien hereof and the Permitted Encumbrances; (x) the Personal Property will not be removed from the Mortgaged Property without the consent of the Lender except for routine repair or replacement; and (xi) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto or pursuant to the Senior Mortgage (defined below).

12. Restrictions on Transfer. For the purpose of protecting the Lender's security, and keeping the Premises free from subordinate financing liens, the Borrower agrees that it, the partners, members, managers, and beneficiary of Borrower, and the members, partners, managers and stockholders of any entity controlling, directly or indirectly, Borrower, will not:

- (a) sell, assign, transfer, hypothecate, grant a security interest in or convey title to (i) the Premises or any part thereof, or (ii) any membership interest, partnership interest, or beneficial interest in Borrower, or (iii) any membership interest, partnership interest or stock in any entity controlling, directly or indirectly, Borrower; provided, however that transfers of membership or partnership interests in (A) Maker (1) among Maker's partners, (2) by an individual partner of Maker to that partner's spouse or children, or (3) by a partner to a trust for the benefit of any such partner and (B) Guarantor (1) among Guarantor's members, (2) by a member of Guarantor that is an affiliated entity to any partner thereof, subject to the terms and conditions of Section 6 of the Redemption Agreement (Assumption of Promissory Notes), (3) by an individual member of Guarantor to that member's spouse or children, or (4) by a member to a trust for the benefit of any such member shall not be a violation hereof; provided further that any transfers described in item

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(A) and (B) of this paragraph 12(a) shall be subject to and conditioned upon transferee executing and delivering to Lender an agreement in a form satisfactory to Lender and its counsel whereby transferee acknowledges and agrees that Borrower is bound by the terms of the Note, Guaranty and other Loan Documents.

- (b) obtain any financing, other than the financing evidenced by the Senior Mortgage, all or a part of which, will be secured by (i) the Premises, or (ii) any membership interest or beneficial interest in Borrower, or (iii) any membership interest, partnership interest or stock in any entity controlling, directly or indirectly, Borrower; or
- (c) convert the Borrower from one type of legal entity into another type of legal entity;

without, in each instance, the Lender's prior written consent. Any violation of this Section 12 shall be deemed a "Prohibited Transfer".

13. Events of Default. Any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

- (a) If the Borrower shall fail (i) to make any payment of principal or interest under the Note when due, or (ii) to make any other payment under the Loan Documents on the date when due or, if no date is stated, five (5) days after demand (or such shorter period as may be expressly provided for herein or therein); or
- (b) If the Borrower shall fail to furnish or cause to be furnished to Lender the financial statements required to be delivered under Section 29 hereof; or
- (c) If the Borrower shall fail to maintain the insurance coverages in effect as required in Section 6 hereof; or
- (d) If a Prohibited Transfer shall occur, except as expressly permitted herein, any person or entity presently not in control of Borrower which is not a natural person shall obtain control directly or indirectly of such Borrower, whether by purchase or gift of stock or assets, by contract, or otherwise; or
- (e) If there shall occur any default or event of default, any similar event, any event that requires the prepayment of borrowed money or permits the acceleration of the maturity thereof, or any event or condition that might become any of the foregoing with notice or the passage of time or both, under the terms of any evidence of indebtedness or other agreement with Lender issued or assumed or entered into by Borrower or any other guarantor, or under the terms of any document or instrument under which any such evidence of indebtedness or other agreement is issued, assumed, secured, or guaranteed, and such event shall continue beyond any applicable notice, grace or cure period; or
- (f) If any representation, warranty, certificate, financial statement, report, notice or other writing furnished by or on behalf of Borrower, any partner of Maker, any member or Manager of Guarantor or any other guarantor of the Note to Lender is

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false or misleading in any material respect on the date as of which the facts therein set forth are stated or certified; or

- (g) If this Mortgage or any Loan Document, including any guaranty of or pledge of collateral security for the Note, shall be repudiated or shall become unenforceable or incapable of performance in accord with its terms; or
- (h) If Borrower or any other guarantor shall fail to maintain their existence in good standing in their state of organization or formation or shall fail to be duly qualified, in good standing and authorized to do business in each jurisdiction where failure to do so would reasonably be expected to have a material adverse impact on the assets, condition or prospects of Borrower or any other guarantor; or
- (i) If Borrower fails to perform or cause to be performed any other obligation or to observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower contained in this Mortgage and not specifically referred to elsewhere in this Section 13; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Premises, and the priority, validity and enforceability of the liens created by this Mortgage or any of the other Loan Documents and the value of the Premises are not impaired, threatened or jeopardized, then Maker shall have a period ("Cure Period") of thirty (30) days after Maker obtains actual knowledge of such failure or receives written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period (provided, however, such period shall be limited to ten (10) business days if such failure can be cured by the payment of money), provided further that if Borrower commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for thirty (30) additional days, but in no event shall the Cure Period be longer than sixty (60) days in the aggregate; or
- (j) If any proceeding (judicial or administrative) shall be commenced against Borrower, or with respect to any of their assets, which would reasonably be expected to have a material and adverse effect on the ability of Borrower to repay the Debt; or a judgment or settlement shall be entered or agreed to in any such proceeding which would reasonably be expected to have a material and adverse effect on the ability of Borrower to repay the Debt; or any garnishment, summons, writ of attachment, citation, levy or the like is issued against or served upon Lender for the attachment of any property of Borrower in Lender's possession or control and shall not be lifted or withdrawn within thirty (30) days of the service thereof; or
- (k) If Lender shall not have a security interest in any collateral for the Note of first-priority except as allowed by the applicable Loan Documents, and enforceable in accord with the applicable Loan Documents unless due to the failure of Lender to perfect its security interest; or any notice of a federal tax lien against Borrower shall be filed with any public recorder and Borrower does not pay or obtain release of such lien within thirty (30) days of such filing; or

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- (l) If there shall be any material loss or depreciation in the value of any collateral for the Note for any reason, except for any casualty losses or condemnation and eminent domain awards, which are governed by Sections 7, 8 and 9 of this Mortgage; or Lender shall otherwise reasonably deem itself insecure; or, unless expressly permitted by the Note or the Loan Documents, all or any part of any such collateral or any direct, indirect, legal, equitable or beneficial interest therein is assigned, transferred or sold without Lender's prior written consent; or
- (m) If any bankruptcy, insolvency, reorganization, arrangement, readjustment, liquidation, dissolution, or similar proceeding, domestic or foreign, is instituted by or against Borrower, and, if instituted against Borrower, shall not be dismissed or vacated within sixty (60) days after the filing or other institution thereof; or
- (n) If Borrower or any other guarantor shall die, be declared legally incompetent, dissovle, liquidate, merge, consolidate, or cease to be in existence for any reason; provided, however, that it shall not be an Event of Default hereunder if, within sixty (60) days after the death or dissolution of any guarantor, Borrower shall provide to Lender a substitute guarantor which shall (i) be acceptable to Lender, in its sole and absolute discretion and (ii) shall execute and deliver to Lender a Guaranty of Payment in the form of the Guaranty (as defined in the Note); or
- (o) If Borrower shall become insolvent, generally shall fail or be unable to pay its debts as they mature, shall admit in writing its inability to pay its debts as they mature, shall make a general assignment for the benefit of its creditors, shall enter into any composition or similar agreement, or shall suspend the transaction of all or a substantial portion of its usual business; or
- (p) If any Event of Default occurs under any other Loan Document; or
- (q) A default by Borrower under the Senior Mortgage.

14. Remedies. Upon the occurrence of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing Borrower from complying with the terms of this instrument) and the expiration of any applicable notice and cure periods, and in addition to such other rights as may be available under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

- (a) Acceleration. Lender may declare the outstanding principal balance of the Note and all unpaid indebtedness of Borrower hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.
- (b) Uniform Commercial Code. Lender shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification

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shall be met by mailing written notice to Borrower at its address set forth in Section 31 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if the Lender elects. The Borrower hereby agrees that if the Lender demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its rights and remedies hereunder, the Borrower will promptly turn over and deliver possession thereof to the Lender, and the Borrower authorizes, to the extent the Borrower may now or hereafter lawfully grant such authority, the Lender, its employees and agents, and potential bidders or purchasers to enter upon the Premises or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located) and the Lender may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional Debt and shall be payable upon demand with interest at the Default Rate.

- (c) Foreclosure. Lender may proceed to protect and enforce the rights of Lender hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Debt in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 *e. seq.*, as from time to time amended (the "Act"), and all other expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Lender in any litigation or proceedings affecting this Mortgage, the Note or the Mortgaged

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Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

- (d) Appointment of Receiver. Lender shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Borrower or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Property and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Borrower hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Borrower or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.
- (e) Taking Possession, Collecting Rents, Etc. Upon demand by Lender, Borrower shall surrender to Lender and Lender may enter and take possession of the Mortgaged Property or any part thereof personally by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Lender, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Borrower relating thereto, and may exclude Borrower and any agents and servants thereof wholly therefrom and may, on behalf of Borrower, or in its own name as Lender and under the powers herein granted:
- (i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;
 - (ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Property for any cause or on any ground that would entitle Borrower to cancel the same;

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- (iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Property made subsequent to this Mortgage without Lender's prior written consent;
- (iv) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Property, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Debt, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;
- (v) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Lender, to insure and reinsure the Mortgaged Property and all risks incidental to Lender's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom;
- (vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of taxes, premiums and other charges applicable to the Mortgaged Property, or in reduction of the Debt in such order and manner as Lender shall select, in its sole discretion; and
- (vii) receive and collect the rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and during the pendency of any foreclosure proceedings and during any redemption period, and the Borrower agrees to consent to a receiver if it is believed necessary or desirable by the Lender to enforce its rights under this subsection. The collection of rents, issues, profits or revenues of the Mortgaged Property by the Lender shall in no way waive the right of the Lender to foreclose this Mortgage in the event of any said Event of Default.

Nothing herein contained shall be construed as constituting Lender a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Lender hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's

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compensation) incurred pursuant to the powers herein contained shall be secured hereby, which expenses Borrower promises to pay upon demand together with interest thereon at the Default Rate. Lender shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any rents actually received by Lender. Without taking possession of the Mortgaged Property, Lender may, in the event the Mortgaged Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Debt payable upon demand with interest thereon at the Default Rate.

- (f) Indemnity. The Borrower hereby agrees to indemnify, defend, protect and hold harmless the Lender and its employees, officers and agents from and against any and all liabilities, claims and obligations which may be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, or lease of any of the Mortgaged Property, or any part thereof, or as a result of the Lender seeking to obtain performance of any of the obligations due with respect to the Mortgaged Property; provided, however, that the foregoing indemnity shall not extend to such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of the Lender, its employees, officers or agents.

15. Compliance with Illinois Mortgage Foreclosure Law.

- (a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the inconsistent provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.
- (b) If any provision of this Mortgage shall grant to Lender any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Lender under the Act in the absence of said provision, Lender shall be vested with the rights granted in the Act to the full extent permitted by law.
- (c) Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under the Act, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in Sections 14(c) or 17 of this Mortgage, shall be added to the Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

16. Waiver of Right to Redeem - Waiver of Appraisement, Valuation, Etc. Borrower shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws", now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such Moratorium Laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled

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upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Lender may determine in its sole discretion. Lender shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Lender so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Lender with the amount payable to Lender out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Debt, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in the Act, or residential real estate, as defined in the Act. To the fullest extent permitted by law, Borrower, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to the Act, and (ii) any and all rights of reinstatement.

17. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Lender for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as Lender may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and reasonable attorneys' fees, all of which expenditures shall become so much additional Debt which Borrower agrees to pay and all of such expenditures shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

18. Protective Advances.

- (a) Advances, disbursements and expenditures made by Lender for the following purposes, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in addition to those otherwise authorized by this Mortgage, constitute "Protective Advances":
- (i) all advances by Lender in accordance with the terms of this Mortgage to:
 - (A) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage;
 - (ii) payments by Lender of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of real estate taxes and

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assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Mortgaged Property or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Mortgaged Property;

- (iii) advances by Lender in settlement or compromise of any claims asserted by claimants under any prior liens;
- (iv) reasonable attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in the Act; (B) in connection with any action, suit or proceeding brought by or against the Lender for the enforcement of this Mortgage or arising from the interest of the Lender hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;
- (v) Lender's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in the Act;
- (vi) advances of any amount required to make up a deficiency in deposits for installments of taxes and assessments and insurance premiums as may be authorized by this Mortgage;
- (vii) expenses deductible from proceeds of sale as referred to in the Act; and
- (viii) expenses incurred and expenditures made by Lender for any one or more of the following: (A) premiums for casualty and liability insurance paid by Lender whether or not Lender or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate; (B) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (C) payments required or deemed by Lender to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; (E) pursuant to any lease or other agreement for occupancy of the Mortgaged Property.

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- (b) All Protective Advances shall be so much additional Debt, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.
- (c) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to the Act.
- (d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in the:
 - (i) determination of the amount of Debt at any time;
 - (ii) indebtedness found due and owing to the Lender in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
 - (iii) determination of amounts deductible from sale proceeds;
 - (iv) application of income in the hands of any receiver or mortgagee in possession; and
 - (v) computation of any deficiency judgment.

19. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property or of any sale of property pursuant to Section 14(c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 14(c) and Section 17 hereof; second, to all items, other than principal and interest evidenced by the Note, which under the terms hereof constitute Debt with interest thereon as herein provided; third, to all unpaid interest on the Note; fourth, to all unpaid principal on the Note; fifth, to whomsoever shall be lawfully entitled to the same.

20. Rights Cumulative.

- (a) Each right, power and remedy herein conferred upon the Lender is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by the Lender.
- (b) By accepting payment of any sums secured by this Mortgage after the due date thereof, by accepting performance of any of the Borrower's obligations hereunder after such performance is due, or by making any payment or performing any act on

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behalf of the Borrower which the Borrower was obligated but failed to perform or pay, the Lender shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of the Borrower's obligations under this Mortgage, the Note, and all other Loan Documents. No waiver or modification of any of the terms of this Mortgage shall be binding on the Lender unless set forth in writing signed by the Lender and any such waiver by the Lender of any Event of Default by the Borrower under this Mortgage shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If the Lender holds any additional security for any of the obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.

- (c) No act or omission by the Lender shall release, discharge, modify, change or otherwise affect the liability of Borrower under the Note, this Mortgage, or any of the other Loan Documents, or any other obligation of the Borrower, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Mortgage or any of the other Loan Documents except as expressly provided in an instrument or instruments executed by the Lender. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Lender in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to the Lender by this Mortgage is not required to be given.

21. Successors and Assigns; Assignment.

- (a) This Mortgage and each and every provision hereof shall be binding upon the Borrower and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person having an interest therein), and shall inure to the benefit of the Lender and its successors and assigns.
- (b) All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than the Guarantor, the Lender may, without notice to the Borrower, deal with such successor or successors in interest of the Guarantor with reference to this Mortgage and the Debt in the same manner as with the Guarantor without in any way releasing or discharging the Borrower from its obligations hereunder. The Borrower will

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give immediate written notice to the Lender of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section shall vary or negate the provisions of Section 12 (Restrictions on Transfer) or Section 40 (Due on Sale or Encumbrance) hereof.

- (c) The rights and obligations of Borrower under this Mortgage may not be assigned and any purported assignment by Borrower shall be null and void. Lender shall have the right to sell, assign or transfer portions of its right, title and/or interest in and to this Mortgage and the other Loan Documents (including the sale of participation interests therein), without the consent or approval of Borrower, and Borrower agrees to cooperate in all respects with Lender in connection therewith, including, without limitation, the execution of all documents and instruments reasonably requested by Lender or such transferee provided that such documents and instruments do not materially adversely affect any of Borrower's duties or obligations under this Mortgage and the other Loan Documents.

22. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter; Corrective Documents.

- (a) The Borrower will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Lender shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Lender all property mortgaged hereby or property intended so to be, whether now owned by the Borrower or hereafter acquired. Without limitation of the foregoing, the Borrower will assign to the Lender, upon request, as further security for the Debt, its interest in all agreements, contracts, licenses and permits affecting the Premises, such assignments to be made by instruments reasonably satisfactory to the Lender, but no such assignment shall be construed as a consent by the Lender to any agreement, contract, license or permit or to impose upon the Lender any obligations with respect thereto.
- (b) From time to time, the Borrower will furnish, within ten (10) days after request from the Lender, a written and duly acknowledged statement of the amount due under the (i) Senior Loan and (ii) the Note and this Mortgage and whether any alleged offsets or defenses exist against the Debt.
- (c) The Borrower and the Lender shall, at the request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or in the execution or acknowledgment hereof or in any other instrument executed in connection herewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested by the Lender or the Borrower, as the case may be, to correct such defect, error or omission.

23. Subrogation. If any part of the Debt is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged

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Property or any part thereof, then by advancing the monies to make such payment, the Lender shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

24. Governing Law. The validity, enforcement and interpretation of this Mortgage shall for all purposes be governed by and construed in accordance with the laws of the State of Illinois, without reference to the conflicts of law principles of that State, and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws.

25. Business Loan.

- (a) The Borrower declares, represents, certifies and agrees that the proceeds of the Note will be used solely for business purposes and that the loan is exempt from interest limitations under Illinois law or any other applicable state law and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 *et seq.*
- (b) All rights, remedies and powers provided by this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable under the provisions of any applicable law.

26. Intentionally Omitted.

27. Assignment of Leases and Other Agreements Affecting the Mortgaged Property. In order to further secure payment of the Debt and the observance, performance and discharge of the Borrower's obligations under the Loan Documents, the Borrower hereby assigns to the Lender all of the Borrower's right, title, interest and estate in, to and under all of the Leases and in and to all of the Rents and Profits (defined as all rents, income, issues and profits arising from any Leases or other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property now or hereafter made affecting the Mortgaged Property or any portion thereof). Unless and until an Event of Default occurs, the Borrower shall be entitled to collect the Rents and Profits (except as otherwise provided in this Mortgage) as and when they become due and payable. Neither these assignments nor Lender's enforcement of the provisions of these assignments (including the receipt of the Rents) will operate to subordinate the lien of this Mortgage to any of the rights of any tenant of all or any part of the Mortgaged Property, or to subject Lender to any liability to any such tenant for the performance of any obligations of Borrower under any such Lease unless and until Lender agrees to such subordination or assumes such liability by an appropriate written instrument.

28. Inspection of Premises and Records. The Lender and its representatives and agents shall have the right to inspect the Premises and all books, records and documents relating thereto at all reasonable times, after giving reasonable notice to the Borrower, and access thereto, subject to the rights of tenants pursuant to Leases. The Lender shall use reasonable efforts to avoid disturbing business operations on the Premises during such inspections. The Borrower or the

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Lender thereof shall keep and maintain full and correct books and records showing in detail the income and expenses of the Premises and permit the Lender or its agents to examine such books and records and all supporting vouchers and data at any time and from time to time on request at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon.

29. Financial Statements. The Borrower represents and warrants that the financial statements for the Borrower and the Mortgaged Property previously submitted to the Lender are true, complete and correct in all material respects, disclose all actual and contingent liabilities of the Borrower or relating to the Mortgaged Property and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. No material adverse change has occurred in the financial condition of the Borrower or the Mortgaged Property from the dates of said financial statements until the date hereof. The Borrower shall furnish to the Lender such financial information regarding the Borrower, its constituent partners or members, as the case may be, the Premises and any other guarantor of the Loan as the Lender may from time to time reasonably request.

30. Environmental Matters.

- (a) Borrower hereby covenants and represents that, to the best of Borrower's knowledge, and except as was disclosed in that certain Phase I Environmental Site Assessment prepared by Environmental Protection Industries as EPI Project Number 151093 dated June 8, 2015, which was provided to Lender (a) the Mortgaged Property presently complies with, in all material respects, all applicable federal, state or local environmental, health and safety statutes and regulations with which non-compliance would have material adverse effect on the Mortgaged Property; (b) the Mortgaged Property is not subject to any judicial or administrative proceeding alleging the violation of any federal, state or local environmental, health or safety statute or regulation, which violation would have a material adverse effect on the Mortgaged Property; (c) the Mortgaged Property is not the subject of a federal or state investigation regarding the need for any remedial action to respond to a release of any hazardous or toxic wastes, substance or constituent, or other substance into the environment which remedial action would have a material adverse effect on the Mortgaged Property; (d) Borrower has not filed any notice under any federal or state law indicating past or present treatment, storage or disposal of a hazardous waste, or reporting a spill or release of a hazardous or toxic waste, substance or constituent, or other substance into the environment; (e) hazardous waste or substance has not been disposed of by placing it in or on the ground of the Mortgaged Property; and (f) there are no underground storage tanks or surface impoundments on the Mortgaged Property.
- (b) Notice of Environmental Accident. Promptly after learning of the occurrence of any of the following, Borrower shall give Lender oral and written notice thereof, describing the same and the steps being taken by the Borrower with respect thereto: (a) the happening of any event involving the spill, release, leak, seepage, discharge or cleanup of any hazardous or toxic waste, substance or constituent; (b) any litigation, arbitration proceeding, or governmental proceeding arising from an

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environmental accident; (c) notice that the Borrower's operations on the Mortgaged Property are not in compliance with requirements of applicable federal, state or local environmental, health and safety statutes and regulations; (d) notice that Borrower is subject to federal or state investigation evaluating whether any remedial action is needed to respond to the release of any hazardous or toxic waste, substance or constituent, or asbestos or other substance from the Mortgaged Property into the environment; or (e) notice that the Mortgaged Property is subject to a lien in favor of any governmental entity for (i) any liability under federal or state environmental laws or regulations or (ii) damages arising from or costs incurred by such governmental entity in response to a release of a hazardous or toxic waste, substance or constituent, or other substance into the environment.

- (c) Wetlands. Borrower hereby covenants and represents that, (a) to the best of Borrower's knowledge, it is in compliance with all federal laws relating to "Wetlands" as defined in 33 C.F.R. 328.3, as hereinafter amended, and in any comparable state and/or local law, statute or ordinance, rule or regulation pertaining to such Wetlands, and (b) Borrower shall not perform or cause to be performed any excavation or fill activity or other acts which would in any way destroy, eliminate, alter, obstruct, interfere with or otherwise affect any Wetlands in violation of applicable laws.

31. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person, (ii) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth below in this Section or as such party may from time to time designate by written notice to the other parties. Either party by notice to the other in the manner provided herein may designate additional or different addresses for subsequent notices or communications:

To Lender: Suzanne M. Rubin, individually and as Trustee
560 N. Beachwood Drive
Los Angeles, California 90004

With copy to: Carlsmith Ball LLP
515 South Flower Street, Suite 2900
Los Angeles, California 90071
Attn: Annie Kun Baker, Esq.

To Borrower: RUBIN SKOKIE LLC
729 Montana Avenue, Suite 6
Santa Monica, California 90403
Attn: Samuel L. Rubin

With copy to: Funkhouser Vegosen Liebman & Dunn Ltd.
55 West Monroe, Suite 2300

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Chicago, Illinois 60603
Attn: Vance L. Liebman, Esq.

32. Releases.

- (a) Upon payment in full of all sums due under the Note and this Mortgage and the other of the Loan Documents, the Lender shall, upon the request of, and at the cost of, the Borrower, execute a proper release of this Mortgage.
- (b) The Lender may, regardless of consideration, cause the release of any part of the Mortgaged Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Mortgaged Property not so released.

33. Single Asset Guarantor. Guarantor was organized solely for the purpose of owning, developing, managing, leasing and disposing of the Mortgaged Property and does not own any real property other than the Mortgaged Property and does not operate any business other than the development, construction, ownership, management and operation of the Mortgaged Property. Guarantor shall not during the term of the Note, including any extensions, modifications, renewals or refinancings thereof, acquire any real property or assets other than the Mortgaged Property, operate any business other than the acquisition, development, management, leasing, operation and disposition of the Mortgaged Property, or incur any liability or obligation other than those incurred in the ownership and operation of the Mortgaged Property. Borrower will not commingle any of its funds or assets with those of any other entity and has held, and will hold, all of its assets and conduct all of its business in its own name. Borrower has paid and will pay all of its liabilities out of its own funds and assets. Borrower has allocated and will allocate fairly and reasonably any overhead for shared office space and will use separate stationery, invoices and checks in connection with the conduct of its business. Borrower has not entered into and will not enter into, or be a party to, any transaction with any of its equity interest holders or its affiliates, except in the ordinary course of its business and on terms which are intrinsically fair and no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party, excepting the management agreement for the Mortgaged Property. Borrower will not engage in, seek, or consent to any dissolution, winding up or liquidation, without the express consent of Lender. The Guarantor's Operating Agreement limits its purpose to the acquisition, development, management, operation and disposition of the Mortgaged Property, and such purposes shall not be amended without the prior written consent of Lender, which consent may be withheld by Lender in its sole and absolute discretion.

34. Indemnification by the Borrower. The Borrower shall protect and indemnify the Lender from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements), imposed upon or incurred by or asserted against the Lender or the members, partners, stockholders, directors, trustees, officers, agents or employees of the Lender by reason of (a) ownership of the Mortgaged Property or any interest therein, or receipt of any Rents or other sum therefrom, (b) any accident to, injury to or death of persons or loss of or damage to Mortgaged Property occurring on or about the Mortgaged Property or the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways, (c) any failure on the part of the Borrower or any other guarantor of the Note to

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perform or comply with any of the terms, covenants, conditions and agreements set forth in this Mortgage, the Note, any of the other Loan Documents, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Borrower, or any other guarantor of the Note, or any other persons directly or indirectly liable for the payment of the Debt, (d) any failure on the part of the Borrower to perform or comply with (i) any other agreement executed by the Borrower or any other guarantor of the Note, or (ii) any requirement of law, (e) payment of sums for the protection of the lien and security interest of the Lender in and to the Mortgaged Property, (f) performance of any labor or services or the furnishing of any materials or other Mortgaged Property in respect of the Mortgaged Property or any part thereof for construction or maintenance or otherwise, or (g) any action brought against the Lender attacking the validity, priority or enforceability of this Mortgage, the Note, any other Loan Document, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Borrower or any other persons directly or indirectly liable for the payment of the Debt. Any amounts payable to the Lender under this paragraph shall bear interest at the Default Rate and shall be secured by this Mortgage. In the event any action, suit or proceeding is brought against the Lender or the members, partners, stockholders, directors, officers, trustees, agents or employees of the Lender by reason of any such occurrence, the Borrower, upon the request of the Lender and at Borrower's sole expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Borrower and approved by the Lender. Such obligations under this paragraph shall survive the termination, satisfaction or release of this Mortgage.

35. OFAC Covenant. Borrower shall ensure, and cause each of its subsidiaries to ensure, that (i) no person who owns twenty percent (20.00%) or more of the equity interests in the Borrower, or otherwise controls the Borrower or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, (ii) the proceeds of the Loan do not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto, and (iii) it shall comply, and cause each of its subsidiaries to comply, with all applicable Bank Secrecy Act ("BSA") laws and regulations, as amended.

36. Miscellaneous.

(a) Time is of the Essence. Time is of the essence of this Mortgage.

(b) Captions and Pronouns. The captions and headings of the various sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

(c) The Borrower Not a Joint Venturer or Partner. The Borrower and the Lender acknowledge and agree that in no event shall the Lender be deemed to be a partner or joint venturer with the Borrower. Without limitation of the foregoing, the Lender shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or

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pursuant to any other instrument or document evidencing or securing any of the Debt, or otherwise.

- (d) Replacement of the Note. Upon notice to the Maker of the loss, theft, destruction or mutilation of the Note, the Maker will execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in any of the Loan Documents to the Note shall be deemed to refer to such replacement note.
- (e) Waiver of Consequential Damages. The Borrower covenants and agrees that in no event shall the Lender be liable for consequential damages, whatever the nature of a failure by the Lender to perform its obligation(s), if any, under the Loan Documents, and the Borrower hereby expressly waives all claims that it now or may hereafter have against the Lender for such consequential damages.
- (f) After Acquired Mortgaged Property. The lien hereof will automatically attach, without further act, to all after-acquired Mortgaged Property attached to and/or used in connection with or in the operation of the Mortgaged Property or any part thereof.
- (g) Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then the Lender may, at its option declare the Debt immediately due and payable.
- (h) Interpretation of Agreement. Should any provision of this Mortgage require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Mortgage, including, without limitation, all exhibits attached to this Mortgage.
- (i) Joint and Several Obligations; Counterparts. If this Mortgage is executed by more than one Borrower party, (i) the obligations and liabilities of Borrower parties under this Mortgage shall be joint and several and shall be binding upon and enforceable against each Borrower party and their respective successors and assigns, and (ii) this Mortgage may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Mortgage.
- (j) Effect of Extensions and Amendments. If the payment of the Debt, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or interested in the Mortgaged Property shall be held to assent to such extension, variation or

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release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Lender, notwithstanding any such extension, variation or release.

- (k) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Lender a mortgagee-in-possession in the absence of the actual taking of possession of the Premises by the Lender pursuant to this Mortgage.
- (l) No Merger. The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Premises, and if the Lender acquires any additional or other interest in or to the Premises or the ownership thereof, then, unless a contrary intent is manifested by the Lender as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.
- (m) Complete Agreement. This Mortgage, the Note and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Borrower and the Lender.
- (n) Incorporation of Note. The terms and provisions of the Note are incorporated herein by this reference as if set forth in full herein. To the extent of any direct conflicts between the terms and provisions of this Mortgage and the terms and provisions of the Note, the terms and provisions of the Note shall control over this Mortgage.

37. JURISDICTION AND VENUE. BORROWER HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY BORROWER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS OR, IF LENDER INITIATES SUCH ACTION, ANY COURT IN WHICH LENDER SHALL INITIATE SUCH ACTION AND WHICH HAS JURISDICTION. BORROWER HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY LENDER IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO BORROWER AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. BORROWER WAIVES ANY CLAIM THAT THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD BORROWER, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, BORROWER SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED

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BY LENDER AGAINST BORROWER AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS. THE EXCLUSIVE CHOICE OF FORUM FOR BORROWER SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT BY LENDER OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING BY LENDER OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND BORROWER HEREBY WAIVES THE RIGHT, IF ANY, TO COLLATERALLY ATTACK ANY SUCH JUDGMENT OR ACTION.

38. Waiver of Jury Trial. BORROWER AND LENDER HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG BORROWER AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND LENDER. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

39. Additional Waivers. BORROWER EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY LENDER ON THIS MORTGAGE, ANY AND EVERY RIGHT IT MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT OR PRINCIPLES OF RES JUDICATA AS APPLIED IN SUCH JURISDICTION SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY LENDER.

40. Due on Sale or Encumbrance. If the Mortgaged Property or any right, title or interest therein, whether legal, beneficial or equitable, or if any portion of the limited partnership interests or limited liability company interests in Borrower (except as otherwise expressly permitted hereunder), shall be sold, transferred, mortgaged, assigned, encumbered or leased, whether directly or indirectly, whether voluntarily, involuntarily or by operation of law, whether by outright sale, deed installment sale contract, land contract, contract for deed, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the property, or by any other method of conveyance of an interest in the Mortgaged Property, without the prior written consent of Lender, THEN Lender may, in its sole discretion, declare immediately due and payable all sums secured by this Mortgage unless security for the Debt has been substituted in accordance with Section 41 hereof.

41. Substitution of Security. Guarantor may substitute other security for the Debt secured hereby, in place of this Mortgage, subject to and in accordance with the terms and conditions set forth in the Guaranty which this Mortgage secures.

42. Compliance with Senior Loan Obligations. This Mortgage and the debt secured hereby are subordinate to the lien of that certain Mortgage, Assignment of Rents and Leases, and

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UCC Financing Statement from Borrower to Lender encumbering the Mortgaged Property (as amended, restated, renewed or replaced, collectively the "Senior Mortgage") and the debt secured thereby, which Senior Mortgage secures the Senior Loan. Such subordination is more fully provided for in the Subordination Agreement by and among Borrower, Lender, Wintrust, and various other parties, to which reference is hereby made; in the event of any conflict or inconsistency, the terms of such Subordination Agreement, as and if amended, restated, renewed or replaced, shall prevail. Borrower represents and warrants that no default has occurred or presently exists under the Senior Loan or any document or instrument securing such Senior Loan and that this Mortgage shall not constitute a default thereunder; Borrower covenants and agrees to faithfully perform all obligations under the Senior Mortgage, the note evidencing the Senior Loan and all other instruments, agreements or any other documents secured thereby; and Borrower further agrees to furnish Lender, promptly after receipt, copies of all notices to the holder of the Senior Loan. Borrower further agrees that a breach of or a default under any of the terms and conditions of the Senior Loan, or any document or instrument securing such loan, or the terms and provisions of this paragraph shall, at the option of the Lender, constitute a default under this Mortgage, the Note and the other Loan Documents. In the event of any such default, Lender may, in its discretion and at its sole option, cure such default and any sums incurred or expended relative thereto by Lender shall become immediately due and payable and shall be secured by the lien of this Mortgage with interest at the default rate specified in the Note.

Borrower may at any time and from time to time refinance the Senior Loan on such terms as Borrower and Wintrust shall determine, in which case this Section of this Mortgage as well as the referenced Debt and Collateral Subordination Agreement shall remain in full force and effect.

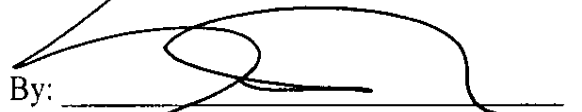
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IN WITNESS WHEREOF, Borrower has caused this Mortgage to be duly executed and delivered as of the day and year first above written.

BORROWER:

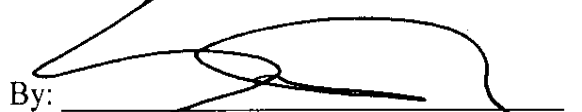
RUBIN SKOKIE LLC, an Illinois limited liability company

By: 

Name: Samuel L. Rubin

Its: Manager

SMA, LTD., a California limited partnership

By: 

Samuel L. Rubin, as Trustee of the Samuel L. Rubin Revocable Trust dated January 21, 2004, its General Partner

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ACKNOWLEDGMENT

(Rubin Skokie LLC)

STATE OF Illinois)

) S.S.

COUNTY OF COOK)

I, Christine A Miller, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Samuel L. Rubin, who is personally known to me to be the Manager of Rubin Skokie LLC and the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17th day of March, 2017.



Christine A Miller
Notary Public

My commission expires:

3-30-2017

ACKNOWLEDGMENT

(SMA, Ltd.)

STATE OF Illinois)

) S.S.

COUNTY OF COOK)

I, Christine A Miller, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Samuel L. Rubin, who is personally known to me to be the Authorized Officer of SMA, Ltd. and the person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 17th day of March, 2017.



Christine A Miller
Notary Public

My commission expires:

3-30-2017

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EXHIBIT A

LEGAL DESCRIPTION OF LAND

PARCEL 1:

THE EAST 220 FEET (EXCEPT THE EAST 33 FEET THEREOF DEDICATED FOR PUBLIC STREET (LARAMIE AVENUE) BY PLAT OF DEDICATION RECORDED MARCH 22, 1976 AS DOCUMENT NO. 23424206) OF LOT 1 OF ASSESSOR'S DIVISION, ALSO KNOWN AS LOT 14 OF COUNTY CLERK'S DIVISION, BEING THE NORTH 3 CHAINS OF NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THE WEST 100 FEET OF THE EAST 320 FEET OF LOT 1 OF ASSESSORS DIVISION ALSO KNOWN AS LOT 14 IN COUNTY CLERKS DIVISION IN THE EAST 1/2 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THE WEST 120 FEET OF THE WEST 220 FEET OF THE EAST 440 FEET OF LOT 1 OF THE ASSESSOR'S DIVISION; ALSO KNOWN AS LOT 14 OF THE COUNTY CLERK'S DIVISION, BEING THE NORTH 3 CHAINS OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 10-33-101-104-0000

Commonly known as: 5201-5231 W. Touhy Avenue
Skokie, Illinois 60077

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EXHIBIT B

INSURANCE REQUIREMENTS

<p>General and Access Liability Insurance (including workman's comp)</p>	<p>Acord 25 Borrower must be named insured or additional insured Name Lender as additional insured \$1,000,000 per occurrence and \$2,000,000 aggregate \$5,000,000 umbrella</p>
<p>Builder's Risk (Construction Loans) NOTE: Can be carried by borrower or general contractor (needs to be addressed)</p>	<p>Acord 25 Borrower must be named insured or additional insured Name Lender as certificate holder, mortgagee and loss payee Replacement Cost Coverage Property description must be on certificate</p>
<p>All Risk Insurance (to be received upon substantial completion)</p>	<p>Acord 27 or 28 Borrower must be named insured or additional insured Name Lender as certificate holder, mortgagee and loss payee Replacement Cost Coverage Property description must be on certificate</p>
<p>Evidence of Property Coverage – All Business Assets</p>	<p>Acord 27 Borrower named as insured or additional insured Name Lender as certificate holder Certificate holder must be named Lender's loss payee Replacement Cost</p>
<p>Loss of Income/Rents (income producing properties)</p>	<p>12 months coverage Borrower named as insured or additional insured Lender as certificate holder Certificate holder must be named Lender's loss payee</p>
<p>Machinery/Equipment</p>	<p>Acord 27 or 28 Borrower named as insured or additional insured Lender as certificate holder Certificate holder must be named Lender's loss payee</p>
<p>Flood Insurance (If applicable)</p>	<p>Borrower named as insured or additional insured Lender as certificate holder Certificate holder must be named Lender's loss payee, Mortgagee \$500,000 minimum (as defined by FEMA)</p>

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Additional Insurance. Borrower shall maintain such other insurance with respect to Borrower and the subject property against loss of damage of the kinds from time to time required by Lender.

Certificate should reflect the following:

- **Notice of cancellation must be 30 days (10 days for non-payment).**
- **Suzanne Rubin, 560 N. Beachwood Drive, Los Angeles, California 90004**

Property of Cook County Clerk's Office
COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS